IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5920 of 1997

with

CIVIL APPLICATION No 2679 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DEVJIBHAI RANABHAI MAKWANA

Appearance:

1. Special Civil Application No. 5920 of 1997

M/S PATEL ADVOCATES for Petitioner No. 1-2

MR RC KODEKAR for Petitioner No. 1

MR HD DAVE ASSTT GOVERNMENT PLEADER for Petitioner No. 1-2

MR AA KHAN for Respondent No. 1

MR HRIDAY BUCH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2003

ORAL JUDGEMENT

#. Heard learned AGP Mr.H.D.Dave appearing on behalf of the petitioner - State of Gujarat and learned advocate Mr.H.C.Buch on behalf of the respondent workman.

When this matter is taken up for hearing, learned advocates for the respective parties have agreed for final hearing and considering the consent of both the parties, this matter is taken up for final hearing.

#. The petitioner State of Gujarat has challenged the award passed by the Labour Court, Bhavnagar in Reference No.609 / 1993 dated 10th December, 1996 wherein the labour court has granted reinstatement of the respondent workman with 75 % backwages of the interim period. In the present petition, initially, RULE has been issued on 11th August, 1997 and also granted interim relief qua backwages subject to the provisions of Section 17-B of the I.D.Act, 1947. Learned advocate Mr.H.C.Buch on behalf of the respondent workman has made it clear that in pursuance of the order passed by this Court on 11th August, 1997, the respondent has been reinstated by the petitioner immediately thereafter and thereafter the workman has been working with the petitioner at Jodiya. Learned AGP Mr.H.D.Dave for the State has submitted that the labour court has committed gross error in granting 75% backwages of the interim period. He submitted that the date of termination of the respondent workman as alleged by the respondent workman is 24th September, 1985 and the workman has raised the industrial dispute after period of eight years and the matter was referred in for adjudication in the year 1993 and the labour court has passed the award on 10th December, 1996 and therefore, the labour court has committed error while granting backwages of the delayed period and therefore, the submission is, the labour court ought not to have granted the backwages from the date of termination.

#. Learned advocate Mr.H.C.Buch for the respondent workman submits that in light of above facts, this Court may pass appropriate orders in respect of backwages of the interim period. However, it may be noted that considering the award impugned in this petition, the learned AGP Mr.H.D.Dave for the State, has not challenged the directions issued by the labour court in respect of reinstatement of the respondent workman with continuity of service, but, has mainly contested the backwages part awarded by the labour court concerned in favour of respondent workman.

#. I have considered submissions made by the learned advocates for the respective parties. Looking to the undisputed facts between the parties to the effect that the workman who has put in service of 232 days before terminating service of the petitioner. After considering this aspect, the labour court has come to the conclusion that the workman had completed 240 days service and thereafter, new hands have been recruited by the petitioner and that is how, the petitioner has violated provisions of Section 25-F & H of the I.D.Act and therefore, the labour court has granted reinstatement with continuity of service but the labour court has granted backwages to the respondent workman as gainful employment is not proved by the petitioner but while passing such directions, it is the duty of the labour court to consider the important aspect that Reference has been made by appropriate authority in the year 1993 though termination was of 24th September, 1985. Therefore, there was delay of eight years in raising the industrial dispute by the respondent workman, according to my opinion, for that the workman is not entitled to any amount of backwages for the delayed period, for which, the petitioner was not at fault. The reference has been made in the year 1993 and the award passed on 10th December, 1996, which according to my opinion, considering the date of Reference till the date of award, if 50 % backwages of this period is granted to the workman, will meet the ends of justice between the parties. Accordingly, the award passed by the labour court, Bhavnagar in Reference No.609 / 1993 dated 10th December, 1996 is modified to the effect that reinstatement with continuity of service which has been granted by the labour court is not disturbed by this Court and the same is upheld. However, in respect of the backwages part, the respondent workman is entitled to 50% backwages of the interim period with effect from the date of Reference till date of award i.e. 10th December, 1996. Accordingly, the award in question stands modified by this Court.

#. At this stage, learned advocate Mr.Buch for the respondent workman submits that the workman is entitled to full backwages from the date of award till the date of actual reinstatement but the same has not been paid by the petitioner with effect from 10th December, 1996. He also submitted that after reinstatement on 16th May, 1998, no regular wages has been paid to the workman and therefore, request made before this Court for issuance of suitable directions may be issued to the petitioner so that they may pay full wages from the date of award till

the actual date of reinstatement as well as regular wages from the date of actual reinstatement i.e. 16th May, 1998 upto till date and the different thereof. In turn, learned AGP Mr.H.D.Dave for the petitioner State submits that some reasonable time may be granted by this Court so that the petitioner can comply with the directions that may be issued by this Court. In view of above facts and submissions, it is directed to the petitioner to pay regularly the wages to the respondent workman with effect from 10th December, 1996 till 16th May, 1998 within period of three months from the date of receipt of copy of this order. It is further directed to the petitioner to pay different of regular wages with effect from 16th May, 1998 upto 30th April, 2003 to the respondent workman within period of four months thereafter on receiving a copy of this order.

In view of above observations and directions, this petition stands allowed accordingly. Rule is made absolute to the extent indicated above with no order as to costs.

Since this Court has disposed of the main petition by this order today, Civil Application No.2679 / 2003 also stands disposed of accordingly.

Direct Service permitted to the original respondent.

Date : 7-5-2003 [H.K.Rathod, J.]

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